

Crying in America, Dismissing the “Collateral Casualties” of Drone Warfare. Obama demands that “Targeted Killing” be Subject “to more Meaningful Checks”

U.S.: dismiss lawsuit over Americans killed by drones

By [Josh Gerstein](#)

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The U.S. Government on Friday asked a federal judge to dismiss a lawsuit over the killing of three American citizens in drone strikes in Yemen earlier this year: alleged Al-Qaeda in the Arabian Peninsula leader Anwar Al-Awlaki, his son Abdulrahman, and alleged AQAP magazine editor Samir Khan.

The administration also threatened to invoke the State Secrets Privilege if the suit is not dismissed on other grounds. The privilege, which 2008 presidential candidate Barack Obama regularly blasted the Bush administration for invoking, allows the government to seek dismissal of a suit if it could expose national security secrets.

In the motion to dismiss, Justice Department lawyers argue that the necessity for the strikes and the viability of any alternatives is a question beyond the proper purview of the courts.

“Plaintiffs thus invite this Court to determine whether an individual in Yemen whom the Executive Branch had already declared a leader of an organized armed enemy group, and a foreign operative of that group, posed a sufficient threat to the United States and its citizens to warrant the alleged use of missile strikes abroad within the context of an armed conflict and the Executive’s national self-defense mission,” the motion says. “Moreover, they ask this Court to pass judgment on the Executive’s purported battlefield and operational decisions in that conflict—namely, to determine whether lethal force was the most appropriate option available; if so, what sort of lethal force to employ; and whether appropriate measures were taken to minimize collateral damage. Each of these issues is a ‘quintessential source’ of political questions.”

News reports and the lawsuit filed in July by the family members indicate that Khan was a collateral casualty of [the September strike that killed the elder Al-Awlaki](#), and the junior Al-Awlaki was a collateral casualty of an October strike aimed at an Egyptian named Ibrahim Al-Banna.

However, the Justice Department said the legal legitimacy of the alleged collateral casualties was inextricably intertwined with the justification for the use of deadly force against the intended targets.

“In assessing the claims of Samir Khan and Abdulrahman Al-Aulaqi, the complaint also implicitly asks this Court to determine the magnitude of the threats posed by the alleged targets, Anwar Al-Aulaqi and Al-Banna—a necessary predicate to evaluating which protective ‘measures’ were ‘feasible’ or ‘proportionat[e]’ in any action against them,” the motion says.

The U.S. Government motion insists that the Executive Branch’s power to use deadly force against citizens is governed by legal principles and guarantees “due process,” but that the courts have no role to play in ensuring the enforcement of those limits.

“The Attorney General has laid out some of the principles underlying the Executive Branch’s exercise of its national self-defense prerogative against a leader of al-Qa’ida or an associated force. It is the notion of judicially crafted and managed standards in the context of the issues raised by Plaintiffs’ complaint that collides with the separation of powers delineated in our Constitution,” the motion says.

The motion describes notifications to Congress as a check on the president’s power to order drone strikes, but the motion appears to concede that Congress is not informed about specific strikes until after they take place. “The Legislative Branch...has not acted to preclude them,” the Justice Department filing says.

The groups backing the lawsuit, the American Civil Liberties Union and the Center for Constitutional Rights, issued a statement Friday deploring the Obama administration’s position.

“The essence of the government’s argument is that it has the authority to kill Americans not only in secret, but also without ever having to justify its actions under the Constitution in any courtroom. To claim, as the administration has today, that the courts have no role at all to play in assessing whether the government’s targeted killings of Americans are lawful—even after the fact—simply cannot be squared with the Due Process Clause,” the groups said.

“The president himself has acknowledged that the targeted killing program must be subject to more meaningful checks, but there is little evidence of that recognition in the brief filed by the government today,” the statement added.

The government also made a technical argument against the lawsuit, asserting that the family members have no authority to proceed since they’ve not been officially designated as executors of the deceased individuals estates.

In 2010, [a federal judge in Washington dismissed a similar suit](#) seeking to strike the elder Al-Awlaki from a purported “kill list” maintained by the U.S. Government. U.S. District Court Judge John Bates agreed that the dispute was not one well-suited to the courts, but he acknowledged that the suit raised serious questions. He pointed out the odd fact that the government would need judicial approval to wiretap Al-Awlaki but appeared to need no such approval to kill him.

The Justice Department has declined to confirm that Anwar Al-Awlaki was wanted on criminal charges at the time of his death. However, it has claimed he was a key player in the Christmas Day 2009 attempt to bring down a Delta Airliner arriving in Detroit from Amsterdam. He was also formally designated as a terrorist by the State Department.

The Justice Department's motion to dismiss in the new suit is posted [here](#). The notice regarding possible invocation of the State Secrets Privilege is [here](#).

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